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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 ALI AMIR ABDUL AZIZ,

Case No.: 3:14-cv-00457-RCJ-VPC

10 Plaintiff,

11 vs.

12 EL DORADO RESORTS, LLC. THE CITY OF
13 RENO POLICE DEPARTMENT, and KELLIE
14 HARTER, individually and in her official
capacity,

15 /
16 Defendants.

17 **DEFENDANTS CITY OF RENO AND OFFICER HARTER'S**
18 **MOTION TO DISMISS PURSUANT TO FED. R. CIV. PRO. 12(b)(6)**

19 COMES NOW, Defendants, CITY OF RENO, RENO POLICE DEPARTMENT and
20 OFFICER HARTER, (hereinafter "RENO DEFENDANTS"), by and through their attorneys
21 JOHN J. KADLIC, Reno City Attorney, and JACK D. CAMPBELL, Deputy City Attorney, and
22
23 hereby moves this court for an order dismissing certain claims related to the RENO
24 DEFENDANTS pursuant to Fed. R. Civ. Pro. 12(b)(6) for failure to state a claim upon which
25 relief may be granted.

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1 This motion is made and based upon all pleadings and papers on file herein, the attached
2 memo of Points and Authorities, and any additional or further evidence this Court may deem just
3 and proper.

4 DATED this 20th day of October, 2014.

5 JOHN J. KADLIC
6 Reno City Attorney

7 By: /s/ Jack D. Campbell
8 JACK D. CAMPBELL
9 Deputy City Attorney
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **APPLICABLE LAW**

4 Pursuant to Fed. R. Civ. P. 12(b)(6), a court may dismiss a plaintiff's complaint for
 5 "failure to state a claim upon which relief can be granted." A properly pled complaint must
 6 provide "a short and plain statement of the claim showing that the pleader is entitled to relief."
 7 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8
 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a
 9 "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S. Ct. 1937,
 10 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Factual allegations must be
 11 enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion
 12 to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is
 13 plausible on its face." *Iqbal*, 129 S. Ct. at 1949 (internal citation omitted).

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 16 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
 17 when considering motions to dismiss. First, the Court must accept as true all well-pled factual
 18 allegations in the complaint; however, legal conclusions are not entitled to the assumption of
 19 truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by
 20 conclusory statements, do not suffice. *Id.* at 1949. Second, the Court must consider whether the
 21 factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is
 22 facially plausible when the plaintiff's complaint alleges facts that allow the court to draw a
 23 reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where
 24 the complaint does not permit the court to infer more than the mere possibility of misconduct, the
 25 complaint has "alleged—but not shown—that the pleader is entitled to relief." *Id.* (internal
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1 quotation marks omitted). When the claims in a complaint have not crossed the line from
2 conceivable to plausible, plaintiff's complaint must be dismissed. *Twombly*, 550 U.S. at 570.

3 In considering a motion to dismiss for failure to state a claim under Rule 12(b)(6), the
4 court must accept as true all material allegations in the complaint as well as all reasonable
5 inferences that may be drawn from such allegations. *LSO, Ltd. V. Stroh*, 205 F.3d 1146, 1150
6 (9th Cir. 2000). The allegations of the complaint also must be construed in the light most
7 favorable to the nonmoving party. *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000).
8 The purpose of a motion to dismiss under Rule 12(b)(6) is to test the legal sufficiency of the
9 complaint. *Navarro v. Block* 250 F.3d 729, 732 (9th Cir. 2001).

11 Recently, the Ninth Circuit Court of Appeals instructed the District Courts to "read the
12 allegations of a complaint in the context of the full documents which the allegations purport to
13 summarize and, where appropriate, to accept the documents, rather than a characterization of the
14 documents, as the true account." *Rosales-Martinez v. Palmer*, 753 F.3d 890 (9th Cir. Nev.
15 2014). Accordingly, please find a copy of Reno Police Department Report No. 12-18357
16 attached as EXHIBIT 1; a copy of State of Nevada City of Reno Police Department Complaint,
17 Citation # 550502 with attached witness statements attached as EXHIBIT 2; and a copy of a
18 Motion to Dismiss without Prejudice filed in the Municipal Court of the City of Reno, Case No.
19 12-18357, City of Reno v. Ali Amir Abdul-Aziz attached as EXHIBIT 3 and all are incorporated
20 herein by reference.

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1 II

2 DISCUSSION

3 As these documents show, Plaintiff's claims against Defendants HARTER and The CITY
4 OF RENO POLICE DEPARTMENT are completely without factual support or legal
5 justification.

6 **A. The Reno Police Department is a departmental entity of the City of Reno, and**
7 **therefore is not an entity that may sue or be sued.**

8 NRS 41.031 waives sovereign immunity only for the State and political subdivisions of
9 the State, and departments of political subdivisions are not suable entities. It is well established
10 law that in the absence of statutory authorization, a department of the municipal government may
11 not, in the departmental name, sue or be sued. *Wayment v. Holmes*, 112 Nev. 232, 238, 912 P.2d
12 816 (1996). Because CITY OF RENO POLICE DEPARTMENT is not a suable entity, all
13 claims made against this entity must be dismissed.
14

15 **B. Unlawful Arrest**

16 As Plaintiff admits in paragraph 30 of the complaint (Doc. # 1, p.6), HARTER did not
17 detain or handcuff him, the ELDORADO RESORTS security personnel did. In fact, as Plaintiff
18 admits, HARTER released him from his "shackles" and called for an ambulance to transport him
19 to the hospital for his complaints of back pain. Nothing within these alleged facts show
20 HARTER detaining or arresting the Plaintiff. In fact, as Plaintiff admits in paragraph 46 of the
21 complaint (Doc. #1, p.8) HARTER, *in her own vehicle*, followed the ambulance to the hospital
22 where she gave Plaintiff a copy of the citation signed by Eldorado Security Supervisor Steve
23 Foster. (EXHIBITS 1 & 2). These facts clearly show that Plaintiff was not being detained by
24 HARTER as he rode by himself in the ambulance and sat by himself in the Renown Emergency
25 Department awaiting treatment. Furthermore, the undeniable facts are that HARTER only gave
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1 Plaintiff a copy of the criminal complaint signed by the Eldorado Security staff and did not arrest
2 him (EXHIBITS 1&2). The facts as alleged in the Complaint, and shown by EXHIBITS 1 & 2
3 fail to establish a claim for "unlawful arrest", and that claim should be dismissed as it applies to
4 HARTER and RENO POLICE DEPARTMENT.

5 **C. Malicious Prosecution**

6 Plaintiff's claims of malicious prosecution are equally without factual or legal support.
7 First, the criminal trespass action was started by ELDORADO, and not HARTER or RENO
8 POLICE DEPARTMENT. As EXHIBIT 2 clearly shows, ELDORADO representative Steve
9 Foster brought the criminal charges, not HARTER.
10

11 As the City of Reno Municipal Court docket (EXHIBIT 3) shows, Plaintiff was not
12 prosecuted for the trespass charge. EXHIBIT 3 shows that Plaintiff entered a not guilty plea on
13 October 23, 2012, and that nothing else occurred until the Reno City Attorney filed the motion to
14 dismiss the charges on December 27, 2013 which was granted by the Municipal Court Judge on
15 January 2, 2014. Other than appearing to answer the charges of trespass, Plaintiff was never
16 prosecuted by either HARTER or CITY OF RENO POLICE DEPARTMENT. Accordingly, the
17 facts alleged in the complaint fail to state a claim against these Defendants and should be
18 dismissed.
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21 **C. Qualified Immunity**

22 A police officer sued under §1983 is entitled to qualified immunity unless it is shown that
23 the officer violated a statutory or constitutional right that was clearly established at the time of
24 the challenged conduct. *Ashcroft v. al-Kidd*, 131 S. Ct. 2074 (U.S. 2011). A defendant cannot
25 be said to have violated a clearly established right unless the right's contours were sufficiently
26 definite that a reasonable officer in the defendant's shoes would have understood that he was
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1 violating it. *Id.* Here, HARTER did not believe, and no reasonable officer in her shoes would
2 have believed, that she was violating Plaintiff's Fourth Amendment rights by releasing him from
3 custody and issuing him a criminal citation signed by a private citizen.

4 Although HARTER did not arrest Plaintiff as alleged, she had probable cause to arrest
5 him. HARTER was dispatched to the Eldorado Hotel & Casino on the report of one person in
6 custody for trespassing. Upon her arrival, HARTER was met by the Eldorado Security
7 Supervisor who advised that they had taken Plaintiff into custody for trespassing because he
8 refused to identify himself and he then refused to leave the premises when asked. (EXHIBIT 1,
9 p.3) HARTER contacted the Plaintiff and discovered that he was carrying two identifications,
10 one for his birth name and one for a Muslim name which he alleged that he legally changed his
11 name to. Upon receiving his identification, HARTER released Plaintiff from custody and called
12 him an ambulance. *Id.* Plaintiff now complains that HARTER'S "10 minute interrogation"
13 violated his Fourth Amendment rights, and this claim is completely without merit.

14 The Fourth Amendment permits brief investigative stops when a law enforcement officer
15 has "a particularized and objective basis for suspecting the particular person stopped of a
16 criminal activity." *United States v. Cortez*, 449 U.S. 411, 417-418 (1981); *Terry v. Ohio*, 392
17 U.S. 1 (1968). The "reasonable suspicion" necessary to justify such a stop is dependent upon
18 both the content of information possessed by police and its degree of reliability. *Alabama v.*
19 *White*, 496 U.S. 325, 330 (1990). And, the Supreme Court has firmly rejected the argument that
20 reasonable cause for an investigative stop can only be based on the officer's personal
21 observations, rather than on information supplied by another person. *Adams v. Williams*, 407
22 U.S. 143, 147 (1972).

1 Here, HARTER received information from a reliable source, the Security Supervisor, that
 2 Plaintiff had been asked to leave the Eldorado Casino several times and refused. The Supervisor
 3 also advised HARTER that he had warned Plaintiff about the trespass laws and that he would be
 4 arrested if he did not leave. Furthermore, the Supervisor stated that he wanted to sign a criminal
 5 complaint against the Plaintiff for trespassing. Accordingly, HARTER was provided sufficient
 6 trustworthy information to establish probable cause to arrest Plaintiff for the criminal trespass,
 7 but she didn't. Instead, she released him from custody and gave him a copy of the criminal
 8 citation signed by the Eldorado Security Supervisor. Therefore, HARTER did not violate
 9 Plaintiff's constitutional rights and she should be given qualified immunity.
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11 II

12 CONCLUSION

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 14 Plaintiff has failed to adequately plead a claim against Officer HARTER, CITY OF
 15 RENO, or RENO POLICE DEPARTMENT upon which relief may be granted. Plaintiff's
 16 allegations against these moving Defendants fail to plead sufficient facts to state a cognizable
 17 claim and therefore, the complaint is factually inadequate and should be dismissed in its entirety.

18 RESPECTFULLY SUBMITTED.

19 DATED this 20th day of October, 2014.

20 JOHN J. KADLIC
 21 Reno City Attorney

22
 23 By: /s/ Jack D. Campbell

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List of Exhibits

Reno Police Department Report No. 12-18357	1
Reno Police Department Complaint Citation No. 550502	2
Motion to Dismiss without Prejudice in Case No. 12-18357, City of Reno v. Ali Amir Abdul Aziz	3

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

 X CM/ECF electronic service

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

addressed as follows:

Ian E. Silverberg, Esq.
227 Clay Street
Reno, NV 89501

DATED this 20th day of October, 2014.

/s/ Katie Wellman
Katie Wellman
Legal Assistant

Reno City Attorney
P.O. Box 1900
Reno, NV 89505